

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION NO. 1568 OF 1999

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
  2. To be referred to the reporters or not ?
  3. Whether their lordships wish to see the fair copy of the judgment ?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
  5. Whether it is to be circulated to the Civil Judge?

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PATEL ASHWINBHAI GORDHANBHAI & ORS.

VERSUS

PATEL BECHARBHAI MAGANBHAI & ANR.

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Appearance:

MR HM PARIKH for petitioners

MR BG PATEL for respondents

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Coram: MR.JUSTICE S.K. Keshote,J

Date of decision:21/02/2000

C.A.V. JUDGMENT

#. Heard the learned counsel for the parties.

#. Challenge has been made by plaintiffs-petitioners to

the order of the learned trial court dated 24th September, 1994 under which the application filed by petitioners for making reference of the present case to the competent authority for adjudication of issue of fragment came to be rejected.

#. The learned counsel for the petitioners contended that whether the land in dispute is a fragment or not is a matter to be exclusively decided by the competent court under the Land Revenue Code and not by the Civil Court. In support of his contention, he made reference to the decision of this court in the case reported in 1990(1) GLR 669.

#. I do not find any merits in this contention. Here in this case there is a finding of fact recorded by the court below that the land in dispute was a fragment land from the beginning. If on the basis of material produced on record, the civil court is satisfied that the land in dispute is a fragment, I fail to see what for this reference has to be made. Otherwise also, this order has not finally decided the suit. This is only an interlocutory order and if ultimately the petitioners fail in the suit they have all the right to challenge the propriety, legality and correctness of the same in the appeal which has to be filed against the final judgment of the court below. So in case this order is allowed to stand, it will not occasion any failure of justice or will cause any irreparable injury to the plaintiffs-petitioners. The substance and not the form is now the matter to be taken care of. Merely because the petitioners claim it to be not a fragment, if the court on the basis of the material produced is satisfied that it is a fragment, the insistence of the plaintiffs in such matter to make reference seems to be not justified. Moreover, this decision of the learned trial court is not final. Remedy of correction is available but not at this stage. For that, the petitioners have to wait for final disposal of the suit. In the result, this civil revision application fails and the same is dismissed. Rule discharged. Interim relief earlier granted by this court stands vacated. No order as to costs.

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[sunil]